IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Narain Singh & Anr. Vs. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1703/2007

DATE OF ORDER :: April 24, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.N.R.Choudhary, for the petitioners.
Mr.D.S.Rajvi, for the respondents.

BY THE COURT:

By the instant writ petition under Article 226 of the Constitution of India, the petitioners seek quashing of order Annexure-P/6 dt. 17.3.2007 and a direction in the nature of quo warranto to respondents No.5 and 6 to vacate the post of B.R.C.F. held by them at Block Sojat and Jaitaran, Distt. Pali respectively.

Facts giving rise to the instant writ petition are that the petitioners were initially appointed as a Teacher and thereafter as a School Lecturer in school education since December, 1997

and March, 1996 respectively. Vide notification Annexure-P/1, respondents invited the willing candidates to walk in interview in order to go on deputation. On 1.10.2004, the petitioners appeared in the said interview and were selected for deputation.

By order Annexure-P/2, the petitioners and others were sent on deputation for a period of one year or till the Project, Lok Jumbish comes to an end, whichever is earlier. The petitioners were sent on deputation to the various places mentioned in the order Annexure-P/2. Order Annexure-P/2 clearly states that the deputations of the petitioners and others were for a period of one year or till the Project, Lok Jumbish comes to an end, whichever is earlier and it was made very clear in column 9 pertaining to "Period of deputation" to be of one year from the date of joining or end of the project whichever earlier. By Annexure-P/6 dt. 17.3.2007, the petitioners were repatriated to their parent department. Hence, this writ petition.

A reply to the writ petition has been filed by the respondents admitting that as per the advertisement issued by respondent No.2, the petitioners were sent on deputation and the period of deputation was for only one year vide Annexure-P/1 and they had joined as BRCF on 22.9.2005 and 23.9.2005 respectively. The period of deputation of one year came to an

end and, therefore, both the petitioners have been repatriated to their parent department vide Anneuxre-2 and, therefore, till relieving the petitioners from deputation, they have been repatriated to their parent department in conformity with the order of deputation Annexure-P/1. It has also been stated in the reply that respondents No.5 and 6 filed a writ petition being S.B.Civil Writ Petition No.5353/2005 (Raj Kumar U Ors. Vs. State of Rajasthan & Ors.) and by the order dt. 12.9.2005 Annexure-R/2/1, while issuing notice to the respondents, ad interim order in following terms was passed:

> "Meanwhile, the petitioners, who are already working on their respective posts, shall not be disturbed till further orders."

In view of the ad interim order in the aforesaid writ petition, the petitioners could not be allowed to continue on deputation after the period of deputation came to an end i.e. one year from the date of joining.

Learned counsel for the petitioners has relied on a decision of Hon'ble Supreme Court in State of Punjab & Ors. vs. Inder Singh & Ors., **(1997) 8 SCC 372.** Learned counsel for the petitioners submits that the petitioners were sent on deputation

after following the due process of selection by interview and, therefore, they have legitimate right to continue on deputation.

A rejoinder to reply has been filed by the petitioners pleading ignorance about the writ petition filed by respondents No.5 and 6 hereinabove before this Court and stated that the deputation means assignment of an employee of one department/cadre/organization to any department or cadre or organization. The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves a voluntary decision of the employer to lend the service of his employee and a corresponding acceptance of such services by borrowing employer. It also involves the consent of the employee to go on deputation. It is further stated that the post of BRCF at Raipur is also vacant due to posting of one Narpat Singh Jodha from Raipur, Distt. Pali to Jodhpur and, therefore, it cannot be said that the petitioners are surplus.

Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in Umapati Choudhary vs. State of Bihar and Anr. **(1999) 4 SCC 659;** and State of Mysore vs. M.H.Bellary, AIR 1965 SC 868, wherein the Hon'ble Apex Court held that the deputation can be aptly described as an assignment

of an employee (commonly referred to as the deputationist) of one department or cadre or even an organization (commonly referred to as the parent dpeartment or lending authority) to another department or cadre or organisation (commonly referred to as the borrowing authority). The necessity for sending on deputation arises in public interest to meet the exigencies of public service. The concept of deputation is consensual and involves voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such service by borrowing employer. It also involves the consent of the employee to go on deputation.

While considering the question of repatriation of a deputationist after his permanent absorption, the Hon'ble Apex Court held as under:

> "The University, the parent department or lending authority, the Board, the borrowing authority and the appellant, the deputationist, had all given their consent for deputation of the appellant and for his permanent absorption in the establishment of the borrowing authority. There is no material to show that the deputation of the appellant was not in public interest or it was vitiated by favouritism or mala fide."

In State of Mysore vs. M.H.Bellary (supra), the Hon'ble Apex

Court held as under:

> "The service of an officer on deputation in another department is treated by the rule as equivalent to service in the parent department and it is this equation between the services the two departments that forms the basis of Rule 50(b). So long therefore as the service of the employee in the new department is satisfactory and he is obtaining the increments and promotions in that department, it stands to reason that that satisfactory service and the manner of its discharge in the post he actually fills, should be deemed to be rendered in the parent department also so as to entitle him to promotions which are open on seniority-cum-merit basis."

The decision relied on by the learned counsel for the petitioners have absolutely no application to the facts and circumstances of the instant case as they turn on their own facts.

In the instant case, the petitioners were sent on deputation for a fixed period of one year or till the project comes to an end. It has not been disputed that the period of one year has come to an end.

In State of Punjab & Ors. vs. Inder Singh & Ors. (supra), the Hon'ble Apex Court held that the deputationist is liable to be

repatriated to his parent cadre/department on expiry of period of deputation. Repatriation from deputation, cannot be resisted by an employee on the grounds that he has continued on deputation for a long time during which he earned promotions on ex-cadre post, and that on repatriation he will have to work in his parent cadre on a lower post. He cannot claim permanent absorption on deputation post.

In the instant case, the deputations of the petitioners were for a fixed term. While sending the petitioners on deputation, it was made clear that the deputation to new assignment is for a period of one year or till the project comes to an end, whichever is earlier. The petitioners were well aware about the outer limit of deputation and on expiry of period of deputation, they have been rightly repatriated to their parent department. In my view, the petitioners have no right to remain for indefinite period on deputation in view of the decision of Hon'ble Supreme Court in State of Punjab & Ors. vs. Inder Singh & Ors. (supra).

In this view of the matter, I do not find any merit in the instant writ petition. The writ petition is accordingly dismissed. There shall be no order as to costs.

[H.R.PANWAR],J.

m.asif/-